◦ THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

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AND

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THE HON'BLE SRI JUSTICE K.C. BHANU

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+ WRIT APPEAL No.1913 OF 2003 & BATCH

% Dated 03-12-2004

 # GIMPEX LIMITED,

Rep. by its Commercial Advisor to CMD

T.S. Ramaswmy, Chennai

…. APPELLANT

Vs.

$ J. Ashok Kumar & 5 Others

…. RESPONDENTS

! Counsel for the Appellant: Ms. Nalini Chidambaram, Sr. Advocate,
for Mr. K. Gopal Choduary

^ Counsel for Respondent No.1: Ms. Shoba, Advocate.

^ Counsel for Respondent Nos.2 to 5: G.P. for Industries & Comm.

^ Counsel for Respondent No.6: Mr. D. Prakash Reddy, Sr. Adv., for
Mr. R. Vinod Reddy, Adv.

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1988 SC 1681
2. 1992(1) SCC 91
3. 1996(6) SCC 702

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE K.C. BHANU

W.A. Nos.1913 of 2003 and 1189 & 1288 of 2004

WRIT APPEAL No.1913 of 2003:

(Writ Appeal under Clause 15 of the Letters Patent against the Order, dated 27-03-2003 in W.P. No.10264 of 2000 on the file of the High Court.)

Between:

Gimpex Limited, Gimpex House, 161 Linghi Chetty St., Chennai -600 001,
Rep. by its Commercial Advisor to CMD, T.S.Ramaswamy,
S/o. Late T.R.Seshan, aged about 73 years, R/o. Chennai.

..... APPELLANT

AND

1. J. Ashok Kumar, House No.3.14,
HUDA Colony, Chanda Nagar, Hyderabad -500 050.

2. Government of India, Ministry of Mines,
Rep. by its Under Secretary, New Delhi.

3. Government of Andhra Pradesh,
Rep. by its Secretary, Industries & Commerce Dept.,
Secretariat, Hyderabad.

4. The Director of Mines & Geology, Hyderabad.

5. The Assistant Director of Mines and Geology,
Mahabubnagar.

6. A.D. Gideon S/o. Late A.S. Devadanam,
aged about 45 years, Occ: Business,
R/o.H.No.1-6-227/16/15, Ramnagar, Hyderabad.

(R-6 impleaded as per the Court Order, dt.03-12-04,
in W.A.M.P. No.2589 of 2004.)

.....RESPONDENTS

**Counsel for the Appellant: Ms. Nalini Chidambaram, Sr. Advocate,
for Mr. K. Gopal Choudary**

Counsel for Respondent No.1: Ms. Shoba, Advocate.

Counsel for Respondent No.6: Mr. D. Prakash Reddy, Sr. Adv.,
for Mr. R. Vinod Reddy, Adv.

Counsel for Respondent Nos.2 to 5: G.P. FOR INDUSTRIES & COMMERCE

WRIT APPEAL No.1189 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19-01-2004 in W.P. No.22109 OF 2003 on the file of the High Court.)

Between:

Gimpex Limited, Gimpex House, 181 (New No. 282)
Linghi Chetty St., Chennai-600 001
Rep. by its Manager (Legal & Administration)
Sri D. Suresh S/o. K. Dhanakoti, aged about 39 years,
R/o.E-4, Baid Mehta Complex, 183 Mount Road,
Chennai – 600 015.

..... APPELLANT

AND

1. State of Andhra Pradesh,
Rep. by its Principal Secretary to Govt.,
Industries & Commerce (MI) Department,
Secretariat, Hyderabad.

2. The Director of Mines and Geology, Hyderabad.

3. The Assistant Director of Mines and Geology,
Mahaboobnagar.

4. A. D. Gideon. H.No. 1-6-227/16/5, Ramnagar,
Musheerabad, Hyderabad.

.....RESPONDENT(S)

Counsel for the Appellant: Ms. Nalini Chidambaram, Sr. Advocate,
for Mr. K. Gopal Choudary

Counsel for Respondent Nos.1 to 3: G.P. for Industries & Commerce

Counsel for Respondent No.4: Mr. D. Prakash Reddy, Sr. Adv.,
for Mr. R. Vinod Reddy, Adv.

WRIT APPEAL No.1288 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order, dated 19-01-2004 in W.P. No.22120 of 2003 on the file of the High Court.)

Between:

Gimpex Limited, Gimplex House, 181(New No.282),

Linghi Chetty St., Chennai- 600001,

Rep. by its Manager (Legal & Administration)
Sri D. Suresh, S/o. K. Dhanakoti, aged about 39 years,
Resident of E-14, Baid Mehta Complex, 183 Mount Road, Chennai – 600 015.

..... APPELLANT

AND

1. State of Andhra Pradesh,
Rep. by its Principal Secretary to Government,
Industries & Commerce (MI) Department,
Secretariat, Hyderabad.

2. The Director of Mines and Geology, Hyderabad.

3. The Assistant Director of Mines and Geology,
Mahabubnagar.

4. J. Ashok Kumar , House No.3.14 , HUDA Colony,
Chanda Nagar, Hyderabad - 500 050.

.....RESPONDENTS

Counsel for the Appellant: Ms. Nalini Chidambaram, Sr. Advocate, for Mr. K. Gopal Choudary

Counsel for Respondent Nos.1 to 3: G.P. for Industries & Commerce

Counsel for Respondent No.4: Ms. Shoba, Advocate.

The Court made the following :

JUDGMENT: (Per Hon'ble Sri Justice B. Sudershan Reddy)

These three writ appeals are being disposed of by a common judgment since the subject matter that arises for consideration in all the appeals is one and the same.

W.A. No.1913 of 2003 is filed against the order, dated 27-03-2003, of a learned single judge of this Court passed upon a writ petition (W.P. No.10264 of 2000), filed by the

1st respondent - J. Ashok Kumar. The subject matter of the said writ petition was the order passed by the 2nd respondent – Government of India, Ministry of Mines, in order No.77/2000 in revision application file No.2 (8) 1999 – Rc.II, dated 17-05-2000.

The other two writ appeals are filed against the order, dated 19-01-2004, of a learned single Judge of this Court whereunder and whereby the learned judge dismissed the writ petitions filed by the appellant challenging the order of the State of Andhra Pradesh, sanctioning the mining lease in favour of respondent Nos.1 and 6 herein.

A short point that arises for our consideration in these appeals is whether the appellant is entitled to the benefit of sub-section (2) of Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957 (for short 'the Act') as

applicable in Andhra Pradesh, as it stood prior to
18-12-1999, as contended by the appellant ? The said provision seeks to confer a preferential right for grant of licence or mining lease, as the case may be, upon the applicant whose application was received earlier over an applicant whose application was received later, in respect of the same land.

For the sake of convenience, we shall refer the parties herein as they arrayed in W.A. No.1913 of 2003.

In order to appreciate the grievance of the appellant centering around the aforesaid provision, a few relevant facts which are not in dispute may be noted at the outset.

The appellant applied for grant of mining lease on
03-11-1995 for an extent of Acs.346-00 in Survey Nos.343, 353, 354, 355, 357 & 358 of Jagatpally Village, Peddamandadi Mandal, Mahabubnagar District, to extract the minerals *viz*., Quartz and Feldspar, which are major minerals. The 1st respondent also applied seeking grant of mining lease on 29-01-1998 for an extent of Acs.294-00 in Survey No.343 of the same village. That one, A.D. Gideon, the 6th respondent, also made an application on 03-01-1996 seeking grant of mining lease for an extent of Acs.360-00. There is no dispute whatsoever that the appellant's application dated 03-11-1995 is the first among all the three applications filed for grant of mining lease in respect of almost the same area admeasuring about more than 350 acres of land.

The Assistant Director of Mines and Geology through letter, dated 25-11-1995, required the appellant to be present on 12-12-1995 to participate in the survey

and inspection of the land in respect of which the appellant applied for grant of mining lease. The appellant admittedly did not respond to the said notice. Another notice, dated 15-03-1996, was given to the appellant requiring it to be present on 27-03-1996 for the purposes of inspection and survey of the land.

The survey and inspection were undertaken on

17-05-1996 in the presence of the 6th respondent, since the appellant was not present even on 17-05-1996 though notices were served upon it requiring its presence in connection with the survey and inspection of the land.

That upon survey and inspection of the land, it was found that the mineral deposits were available only in

Survey No.343/1 over an extent of Acs.35-00 and not in the entire extent of the land in respect of which applications have been filed for grant of lease.

On the facts and in the circumstances, the Assistant Director of Mines and Geology found that the appellant herein did not evince any interest whatsoever to obtain the mining lease as it had chosen to remain consistently absent on all the days of inspection and survey. The Assistant Director, accordingly, recommended for rejection of the application of the appellant and duly recommended the case of the

6th respondent for grant of mining lease for Quartz and Feldspar over an extent of Acs.20-00 in Survey No.343/1 of Jagatpally village, Peddamandadi Mandal, Mahabubnagar District, subject to clearance of the Revenue Department, since the land where the mineral is located is admittedly owned by the Government. It is not necessary to notice further details except to note that the Director of Mines and Geology submitted proposals for grant of mining lease in favour of

the 6th respondent over an area of Acs.20-00 and the 1st respondent herein over an area of Acs.15-00 and to reject the appellant's application for grant of mining lease. There is no conflict of interest between the 1st respondent and the 6th respondent as they have mutually agreed and gave their consent for grant of mining lease in their favour over the agreed area.

It is also required to notice that as required under Rule 26 of the Mineral Concession Rules, 1960 (for short 'the M.C. Rules') a show cause notice was issued calling upon the appellant to state as to why its application should not be rejected on the ground that it failed to attend the inspection and survey of the land even after providing three opportunities to present themselves in connection with the survey and inspection of the land. In response to the show cause notice, the appellant herein submitted its explanation vide letter, dated 07-01-1999, inter alia stating that the survey and inspection could not take place on 22-09-1998 due to pre-occupation of the Assistant Director of Mines and Geology even when the appellant Company's representative was present in the office of the Assistant Director of Mines and Geology. The appellant Company's representative vide letter, dated 24-09-1998, has requested the Assistant Director of Mines and Geology to re-fix the date of field inspection in the 1st week of October and thereafter it did not receive any intimation whatsoever from the Assistant Director of Mines and Geology.

The State Government after careful consideration of the entire matter with reference to available record found no merit in the explanation submitted by the appellant and found that the appellant having received the notices failed

to attend the inspection and survey on any of the specified dates. The State Government found the Assistant Director of Mines and Geology had given another chance to the appellant for inspection and survey of the land to be held on

13-11-1998 at the request of the appellant and even on that date also the appellant did not attend for survey and inspection of the land. It is under those circumstances, the State Government found that the appellant was not interested in obtaining the lease. The State Government, accordingly, rejected the application of the appellant vide its Memo No.4273/M.I(2)/99-1, dated 20-05-1999.

The appellant herein preferred revision under

Section 30 of the Act read with Rule 55 of the M.C. Rules, before the 2nd respondent – Government of India, Ministry of Mines. The Revisional authority vide its order, dated

17-05-2000, allowed the revision petition filed by the appellant herein and accordingly set aside the order of the State Government dated 20-05-1999 and remitted the matter with a direction to the State Government to consider the mining lease application of the appellant on merits in accordance with law after affording an opportunity of hearing. The Central Government while disposing of the revision petition filed by the appellant herein observed that the State Government could have granted the mining lease, if at all, in favour of two later applicants over part areas of Survey No.343 only by invoking the powers under Section 11(4) of the Act after due approval from the Central Government; that evidently the State Government had not invoked the powers under Section 11(4) of the Act, and, therefore, erred in granting mining leases over part areas, in respect of which the appellant applied for grant of mining lease, in favour of the later applicants. The grant of mining lease in favour of two later applicants

was accordingly held bad in law. The Central Government found that the appellant was the first applicant and the law required preferential consideration of its application over the applications received later for grant of licence.

The 1st respondent challenged the order of the Central Government on various grounds. The learned single judge allowed the writ petition and quashed the order passed by the revisional authority dated 17-05-2000.

Ms. Nalini Chidambaram, learned senior counsel appearing on behalf of the appellant, submitted that the State Government committed a serious error in rejecting the application of the appellant herein on the ground of absence of the appellant on the date of inspection and survey of the land; the Central Government on the facts in exercise of its revisional power rightly reversed the said finding of the State Government. The learned senior counsel further submitted that the Central Government had correctly and validly held that the State Government had erred in deciding to grant mining lease to respondent Nos.1 and 6 and thereby violated the preferential rights conferred on the appellant being the first applicant for grant of mining lease in that area. The learned senior counsel further submitted that the grant or refusal of mining lease is not a matter of course; the State Government was bound to make comparative assessment of relative merits of all the applicants before granting leases in favour of the later applicants. It was also contended that the order passed by the Central Government so far as the

6th respondent is concerned has become final and therefore no mining lease, as such, could have been granted by the State Government in his favour.

Sri D. Prakash Reddy, learned senior counsel appearing on behalf of the

6th respondent, submitted that the Central Government committed a serious error in coming to the conclusion, as if, the State Government granted mining lease to the applicants whose applications were received later in preference to the application of the appellant in exercise of its power under Section 11(4) of the Act. The State Government never invoked its power under Section 11(4) of the Act, and therefore, the question of recording any special reasons, as such, does not arise nor was there any need to obtain approval from the Central Government.

Learned senior counsel further submitted that the question of making any comparative assessment of all the applicants does not arise, since as on the date when the mining lease was granted in favour of the later applicants there was no application of the appellant pending with the State Government. The learned senior counsel submitted that neither Section 11(3) nor Section 11(4) of the Act, as such, are applicable to the facts situation on hand. It was further submitted, the mere fact that the 6th respondent did not challenge the order of the Central Government is not fatal and the lease granted in his favour cannot be set-aside on that ground.

Ms. Shoba, learned counsel appearing on behalf of the 1st respondent adopted the submissions made by

Sri. D. Prakash Reddy, learned senior counsel appearing for the 6th respondent.

In order to appreciate the submissions, the following admitted facts may be noticed:

The appellant – Gimpex Limited, the 1st respondent – J. Ashok Kumar and respondent No.6 – A.D. Gideon, all have applied for grant of mining lease for the area under consideration in the following manner:

S.No.	Name of the Applicant	Date of Application	Survey Nos.	Extent (Acres)
1	Gimpex Ltd.	3-11-95	343, 353, 354, 355, 356, 357 & 358	346
2	A.D. Gideon	3-1-1996	343, 329, 335, 337, 341, 342, 344, 346, 351, 353, 354, 355, 360, 361 & 363	360
3	J. Ashok Kumar	29-1-1998	343	294

It is clear that as far as Survey No.343 is concerned, all the applicants had applied for grant of mining lease. There cannot be any dispute that the appellant herein is the first applicant, since it had applied for grant of mining lease on 03-11-1995.

The applications were processed and the Assistant Director of Mines and Geology put the parties on notice and required them to be present for inspection and survey and the appellant herein was not present on any one of those dates for undertaking survey and inspection of the area.

The appellant herein admits to have received the communication from the Assistant Director of Mines and Geology vide his letter, dated 07-09-1998, intimating it to attend the inspection and survey of the land on 22-09-1998. The plea of the appellant that the survey could not take place due to pre-occupation of the Assistant Director of Mines and Geology was not acceptable to the State Government as the same is not supported by any material on record. The plea of the appellant that its representative was present on

22-09-1998 in the office of the Assistant Director of Mines and Geology is obviously a false one as is evident from the contents of the counter-affidavit filed by the appellant in the writ petition which is to the following effect:

> "On 22-09-198 the 5th Respondent Company after making all arrangements for inspection, had contacted the Asst. Director's office to convey its readiness. However, the 5th Respondent Company was told by the Superintendent, who was available at that time at the Asst. Director's office informed that both the Asst. Director and the Surveyor were out of station. Hence, the 5th Respondent Company had made a representation on 24-9-1998 to the Asst. Director's office detailing the problems encountered by it on 22-9-1998 and requested for fixing up a suitable date for inspection"

Thus, it is no where stated even in the counter affidavit that the appellant Company's representative was present on 22-09-1998, in the office of the Assistant Director of Mines and Geology, in connection with survey and inspection of the land. It is under those circumstances, the State Government found that the appellant is not interested in obtaining lease and accordingly rejected the application of the appellant. We do not find any legal infirmity in the view taken by the State Government.

It was however, contended before us that the application of the appellant herein could not have been dismissed on the simple ground of absence of the appellant for survey and inspection of the site by the Department. Reliance was placed on the circular instructions issued by the State Government vide memo, dated 15-02-1995, whereunder the attention of the Director of Mines and Geology has been drawn duly informing him that "as per the mineral law, personal absence of the applicant for the inspection of the site by the Department is not a ground for rejection, if full particulars of the location and

the site are available in the application, he should be able to conduct the inspection by himself without insisting for the personal presence of the applicant." The submission made in this regard, in our considered opinion, is without any merit for the reason that it is no where asserted by the appellant herein including in the memorandum of grounds of revision that all the particulars of the location and site were available in the application and there was no necessity of the personal presence of the appellant or its representative in connection with inspection and survey of the land. On the other hand, the appellant itself made a representation to the Director of Mines and Geology with a request to provide a last opportunity enabling its representative to be present on the date of survey and inspection which was conceded resulting in another opportunity for the appellant's presence on 13-11-1998 on which date also the appellant company's representative was not present.

The instructions contained in the memo, dated 15-02-1995, issued by the State Government, are in the nature of guidelines, which do not confer any enforceable right upon any applicant as such. The guidelines, which are nothing more than administrative instructions not having any statutory force. It is well settled that a *Mandamus* does not lie to enforce administrative instructions not having any statutory force, which do not give rise to any legal right in favour of any person **(See: J.R. Raghupathy v. State of Andhra Pradesh).**

Be it as it may, the State Government did not reject the application of the appellant merely on the ground of its absence on four occasions and even after providing another opportunity on 13-11-1998 for the purposes of inspection and

survey of the land. The relevant facts and circumstances were taken into account by the State Government to hold that the appellant company was not interested in obtaining the lease. On facts, the State Government found the plea taken by the appellant that every time when the representative of the appellant company went to the office of the Assistant Director of Mines and Geology on the given date, neither the Assistant Director nor the Surveyor were available in the office, was a false one.

It is not a case where the appellant's case was not taken up for consideration for grant of mining lease nor is it a case where the applications received later were taken up for the purposes of granting mining lease in preference to the appellant's application received earlier to that of the applications of respondent Nos.1 and 6. There is no dispute before us that the applications were required to be considered in accordance with Section 11 of the Act as applicable in Andhra Pradesh as it stood prior to 18-12-1999. It is true that the learned judge referred to the provisions of
sub-section (2) of Section 11 of the Act as amended by Act 38 of 1999 from 18-12-1999, which was not necessary, but on that count, the judgment does not suffer from any infirmity.

Section 11 of the Act as applicable in Andhra Pradesh as it stood prior to 18-12-1999 is as follows:

"**Section – 11**. **Preferential right of certain persons** –

1. Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any

other person:

Provided that the State Government is satisfied that the licensee -

a. has undertaken prospecting operations to establish mineral resources in such land;

b. has not committed any breach of the terms and conditions of the prospecting licence; and

c. is otherwise a fit person for being granted the mining lease

1. Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose appliction was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later:

Provided that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

2. The matters referred to in sub-section (2) are the following:-

d. any special knowledge of, or experience in, prospecting operations or mining operations, as the case may be, possessed by the applicant;

e. the financial resources of the applicant;

f. the nature and quality of the technical staff employed or to be employed by the applicant;

g. such other matters as may be prescribed.

3. Notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section (1), the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

A.P. STATE AMENDMENT

4. Notwithstanding anything contained in this Act no prospecting licence or mining lease shall be granted in the Scheduled areas to any person who is not a member of the Scheduled Tribes:

Provided that this sub-section shall not apply to an undertaking owned or controlled by the State or Central Government ought to a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964 which is composed solely of members of Scheduled Tribes.

Explanation:- For the purposes of this sub-section, -

h. the expression “Schedule Tribes” shall have the same meaning assigned to it in clause (25) of

Article 366 of the Constitution of India; and

i. the expression “Scheduled Areas” shall have the same meaning assigned to it in paragraph 6 of the Fifth Schedule to the Constitution of India.”

The question that falls for consideration is whether the State Government invoked the provisions under
sub-section (4) of Section 11 of the Act in considering the applications of respondent Nos.1 and 6 for grant of mining lease ?

There cannot be any dispute that in terms of the provisions of Section 11(2) of the Act the appellant had a preferential right for consideration of its application for grant of mining lease as against the applications of respondent Nos.1 and 6, which were received later to that of the appellant’s application.

The State Government having taken up the application of the appellant herein rejected the same on the ground that it was not interested in obtaining the mining lease. It is not a case where the applications of respondent Nos.1 and 6 for grant of mining lease were taken up for consideration by the State Government over looking or ignoring the preferential right of the appellant herein for grant of mining lease. It is true that such a course was open to the State Government in exercise of its power under sub-section (4) of Section 11 of the Act but only after obtaining the approval of the Central Government and for the special reasons to be recorded in writing. In such situations, the State Government is not bound to dispose of the application only on first come first served basis. It is not as if, the State Government is bound to grant earlier application as soon as it is received and cannot wait for other applications and

consider all of them together and grant lease to later applicant if the factors enumerated under Section 11(4) of the Act are satisfied. In the instant case, the State Government did not invoke its power under sub-section (4) of Section 11 of the Act for granting the mining lease to respondent Nos.1 and 6.

Likewise it is not a case where sub-section (3) of Section 11 of the Act is applicable to the fact situation on hand. It is not a case where all the applications for grant of mining lease were filed on the same day, and therefore, the question of taking into consideration the matters specified in sub-section (3) of Section 11 of the Act for grant of mining lease, as such, does not arise. There was no need of making any comparative assessment of the applications filed by the appellant and the respondent Nos.1 and 6.

In view of the fact that the application of the appellant had already stood dismissed by the State Government vide its order, dated 20-05-1999, the ratio of the decision reported in **Indian Metals and Ferro Alloys Ltd. v Union of India,** upon which reliance has been placed by the learned senior counsel for the appellant, has no application.

Learned senior counsel relied upon the decision reported in **Dharmbir Singh v. Union of India** in support of the submission that the State Government is required to exercise its discretion, in the matter of grant of mining lease, in accordance with law, so as to ensure prudent exploitation of mineral. There cannot be any doubt that the discretion of the State Government is required to be exercised fairly to grant or refuse to grant any mining licence to any applicant. The question is whether the State Government committed any

irregularity or illegality in exercising its discretion to reject the application for grant of mining lease? The State Government for good and cogent reasons found that the appellant herein was not interested in obtaining any mining lease and accordingly rejected its application. The Central Government interfered with that order on imaginable grounds and the same has been rightly set-aside by the learned single judge under the impugned judgment, which, in our considered opinion, does not suffer from any error.

That after the rejection of the application of the appellant, there were no legal impediments for granting mining lease in favour of the respondents. The impugned G.O. granting mining lease in favour of the respondents, in our considered opinion, does not suffer from any legal infirmity requiring our interference. Therefore, the decision in **Dharmbir Singh's case** (3 Supra) upon which reliance has been placed by the learned senior counsel for the appellant has no application.

Learned senior counsel for the appellant further contended that as against respondent Nos.1 and 6, who were only individuals, the appellant is a corporate body having expertise in the field for over a period of 25 years and had put up very good infrastructure facilities at its various screening and pulverizing plants, which are comparable with international standards and meets the requirements stipulated under Section 11(3) of the Act, and therefore, entitled to grant of mining lease and such grant would be in furtherance of the objects sought to be achieved under the provisions of the Act.

The appellant may be a corporate body having expertise in the field but

that itself cannot be any ground to claim any monopoly for obtaining the mining lease from the State. Prudent exploitation and development of minerals cannot be exclusively left to big companies and the corporate houses. Neither the public interest nor the development of minerals require conferment of any such exclusive privilege upon any corporate house or a big company. There is no presumption that special knowledge of mining operations lies only with the corporate houses and only they can employ quality technical staff. It is not as if, the maximum benefit to the community could be secured by entrusting exploitation of mineral only to the export oriented corporate houses.

Mineral constitutes and forms part of the material resources of the community. The directive principles of the State policy command the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. The expression “Distribution” embraces the wider connotation of granting privileges of lease or licence in favour of deserving individuals with a view to promote economic activities so as best to subserve the public good. The decision of the State Government in granting mining leases to respondent Nos.1 and 6 in no manner adversely affected the public interest nor the same is detrimental to the development of mineral wealth. By granting the privilege of lease in favour of respondent Nos.1 and 6, the State Government had undertaken the distribution of material resources as best to subserve the common good.

If the claim of the appellant is to be accepted, it may amount to promoting monopolistic tendencies, which cannot be allowed. Equitable distribution of mining leases promotes mineral development.

It is apt to recall the observations made by the Supreme Court in **Victorian Granites (P) Ltd. v. P. Rama Rao & Others:**

> ".....Article 39(b) of the Constitution envisages that the State shall, in particular, direct its policies towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Socio-economic justice is the arch of the Constitution. The public resources are distributed to achieve that objective since liberty and meaningful right of life are hedged with availability of opportunities and resources to augment economic empowerment.....Big fish will always eat away small fish in diverse forms, so as to drive the latter away from the area. Legal form of action, if given primacy, the constitutional objective would be easily defeated, creating monopoly in the market by few vested interests controlling the economy. The problem has to be broached from this perspective and must seek an answer to the question whether such transactions would elongate and subserve common good?"

We are required to say no more in this regard.

Neither there is any plea nor proof that the respondents are not equipped and do not possess the requisite expertise to carry on the activity of exploitation of mineral in a prudent manner nor there is any allegation that grant of mining lease in favour of respondent Nos.1 and 6 is not in the public interest. We accordingly find no substance in the submissions made in that regard.

The contention that the order passed by the Central Government so far as the 6th respondent is concerned has become final inasmuch as the same was not challenged by the 6th respondent, and therefore, no mining leases as such could have been granted in his favour is equally devoid of any merit. The

Central Government did not pass any order whatsoever against the 6th respondent. Neither the recommendation made by the authorities to grant mining lease in favour of the 6th respondent nor the decision to grant mining lease was the subject matter put in issue before the Central Government. The 6th respondent did not suffer any order in the hands of the Central Government. There were no legal impediments to grant mining lease to the 6th respondent after this Court disposed of the writ petition setting aside the order of the Central Government. In the circumstances, we are of the considered opinion that mere fact the 6th respondent did not challenge the order of the Central Government is not fatal and the lease granted in his favour cannot be set aside on that ground.

For the aforesaid reasons, we find no merit in these appeals and the same shall accordingly stand dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:_____ Nov., 2004.

_____

K.C. BHANU, J

NOTE:

L.R. Copy to be marked.

(B/O)

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To

1. One Fair copy to the Hon'ble Sri Justice B. Sudershan Reddy.

2. One Fair copy to the Hon'ble Sri Justice K.C. Bhanu.

3. The Under Secretary,
Government of India, Ministry of Mines,
New Delhi.

4. The Secretary,
Government of Andhra Pradesh,
Industries & Commerce Department,
Secretariat, Hyderabad.

5. The Director of Mines & Geology, Hyderabad.

6. The Assistant Director of Mines and Geology,
Mahabubnagar.

7. The Principal Secretary to Govt.,
State of Andhra Pradesh,
Industries & Commerce (MI) Department,
Secretariat, Hyderabad.

8. Two C.Cs. to G.P. for Commerce & Industries,
High Court of A.P., Hyderabad (O.U.T.).

9. Eight L.R. copies.

10. The Under Secretary, Union of India, Ministry of Law,
Justice & Company Affairs, New Delhi.

11. The Secretary, A.P. Advocates Association Library,

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